

Radio WVCH

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GREATER PHILADELPHIA'S FIRST CHRISTIAN STATION—SINCE 1948

October 22, 1997

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Secretary,
Federal Communications Commission
1919 M. Street N.W.
Washington, DC 20554

RE: Tower Siting Preemption Rule Making
MM Docket No. 97-182

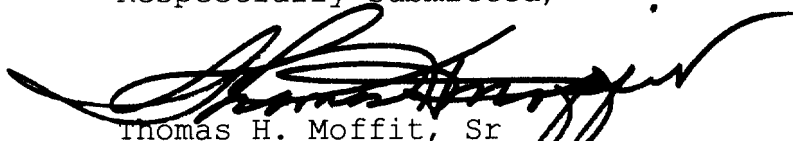
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FEDERAL COMMUNICATIONS COMMISSION

Dear Secretary:

On behalf of Thomas H. Moffit, Sr and WVCH Communications, Inc. please find an original and four copies of comments in the matter of "Preemption of State and Local Zoning Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities" also known as MM Docket No. 97-182.

Thank you.

Respectfully Submitted,



Thomas H. Moffit, Sr
President, WVCH Communications, Inc.

Enclosures: One Original and Four Copies

No. of Copies rec'd
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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of

Preemption of State and Local Zoning and) MM Docket No. 97-182
Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

COMMENTS OF THOMAS H. MOFFIT, SR./24/1997
WVCH COMMUNICATIONS, INC.

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Thomas H. Moffit, Sr/ WVCH Communications, Inc., hereafter referred to as Moffit or WVCH, has been diligently seeking building permission to erect an AM radio station authorized by the Federal Communications Commission since 1987 in Upper Providence Township (hereafter referred to as UP) in Montgomery County, PA, the UP Township switched to an adversary role which stopped and affected the construction of this broadcast facility on 54 cleared acres, zoned agriculture and owned by Thomas H. Moffit, Sr. There were 43 hearings before the local zoning hearing board over a period of three years. There were over 4,300 pages of testimony recorded perhaps the largest in Pennsylvania history for local zoning hearings. 86% of these lengthy hearings were devoted to Radio Frequency Interference (RFI) and page by page scrutiny of the approved FCC application for the Construction Permit. This is a primary example of this Township government attempting to expropriate the primary purpose of the Federal Communications Commission's purpose, that is deciding where a radio station transmission facility may be sited. It might be well to note at this point, that one of the Zoning board members, an attorney, warned, in private session that the Zoning Hearing Board was getting into an area where they had no jurisdiction. This particular Zoning Hearing

member resigned from his position on the Board because of this and other improprieties.

The dollar cost for legal and expert witness fees exceeded \$350,000. The cost of land, broadcasting and transmission equipment exceeded \$750,000. Estimated income, based upon present history of operations the loss now exceeds in excess of \$8,000,000. Consequently, service to the public was denied to an excess of six million persons.

After the initial contact with the UP Board of Supervisors including friendly handclasps and the phrase "Mr. Moffit, we would welcome you to UP Township." The Township officials and their attorney proceeded to enlist opposition to our application for a building permit. The Township then scheduled zoning hearings to begin on this matter.

Moffit was approached by the Chairman of the Zoning Hearing Board with a request to "donate" the sum of \$40,000 for a special project being actively promoted by the Chairman. After declining this "opportunity" the zoning hearings proceeded.

Among the opposition responding to the Supervisors invitation were two major pharmaceutical companies who had just received special zoning changes to establish facilities, the Springford School District, and an association of residents nearby and from a distance was organized by a lady who claimed to be a political committee woman (The association was named CART - Citizens Against Radio Towers).

One of the pharmaceutical drug companies opposing our permit building request - Rhone Poulenc Rorer (hereafter referred to as RPR) is primarily owned by the government of France. They contended that the broadcast signal of WVCH would interfere with their technical lab equipment at their site. However, their building is located at the noll of the WVCH pattern. Approximately 100 watts would be transmitted in their direction. Note: the Federal Drug Administration (FDA) rules and regulations require the drug companies to operate in an environment shielded against any possible outside interference. We secured and presented testimony from the manufacturers of each known piece of equipment used by that facility. The evidence being that each piece of equipment itself was shielded. Rhone Poulenc Rorer refused the offer to perform on-site tests that would determine any possible

entrance of the AM signal at 740 kilohertz entering their buildings. WVCH hired engineers to perform FI tests at their then current laboratory site and determined that AM signals exceeding 300% of the proposed WVCH signal was being received by RPR laboratories. The only witnesses offered by RPR and the Township lacked credentials or experience in broadcasting and in fact lied about educational degrees. (When this witness later tried to testify in another radio zoning case, in another county, he was denied expert status.)

The tests performed by this witness were performed with illegal equipment which violated FCC statutes. Another witness accepted by the UP Zoning Board again gave false credentials as to education and experience. It was discovered that this particular witness was made available by a competing radio station - admittedly for business purposes. Both of the above major witnesses presented jointly by the drug companies and the Township challenged the authority of the FCC in granting this construction permit.

At one point, during the progression of the hearings, the attorney representing WVCH was approached by the

then President of RPR who offered to purchase the property from Moffit for his original purchase price - commenting to him that the property reminded him of his childhood home.

A former head of the FCC Mass Media Bureau was present at one of these hearings and declared "I can not believe this is happening."

Through the hearings, were heard the usual comments regarding ugly towers, flashing lights, music and news vibrated via bedsprings, washing machines, toasters and children being electrocuted while playing ball with metal bats and chain link backstops were verbally promoted throughout the neighborhood - reflecting the "not in my backyard mentality." This feeding frenzy of fear was aggravated by the local township politicians in their Township newsletter. The alleged decline in Township property values was countered with evidence of million dollar homes immediately surrounding other radio transmission facilities.

One of the highlights of the hearings was a letter sent to the Chairman of the Zoning Hearing Board by the then General Counsel of the FCC declaring that the FCC has

final jurisdiction over all RFI matters and siting of radio stations. At that time, the Chairman of the Zoning Hearing Board declared, while throwing the letter into the air "no one in Washington, DC is going to tell us how to operate this Township." It should be noted that there are 13 radio broadcast transmission facilities within Montgomery County, PA - most of which are located in residential zoned districts.

Throughout these lengthy hearings, the attorney representing UP Township would question the need for this "powerful" radio station to be in existence. He continually suggested that Moffit should be satisfied with a 5,000 watt single-tower radio station. In doing this he also questioned Moffit's "greedy motives" in attempting to operate this radio station. The Township attorney's behavior and side comments throughout the hearings was demeaning and mean spirited in his constant attack on Moffit's desire to serve the public interest through radio.

Some other "bizarre" happenings at the zoning hearings were:

- one night was to be reserved for testimony of WVCH supportive witnesses - 26 reputable witnesses were present and available to testify and the zoning hearing board limited testimony to three witness
- at another scheduled zoning hearing board meeting, Moffit was not permitted in the hearing room by the claim that trade secret information was expected to be given although the competing drug company was allowed to participate (this proved to have no the relevance to the issue at hand)
- Moffit was denied representation by his counsel with expertise in Constitutional law

It should be noted that after Moffit's frequent reference to FCC preemption in the matter of RFI and siting of radio stations that the Township attorney reverted to an absurd argument that a "studio" is a radio transmission facility and that the towers and ground system required by the FCC approved construction permit was unnecessary for the operation of a radio station. This unrealistic contention was used by the Township in subsequent appeals to local courts and was accepted by judges as authority for siting of radio

broadcast stations. These and similar uneducated arguments completely removed the FCC from their Congress-ordained authority to site and control the transmission of radio broadcast signals in the United States.

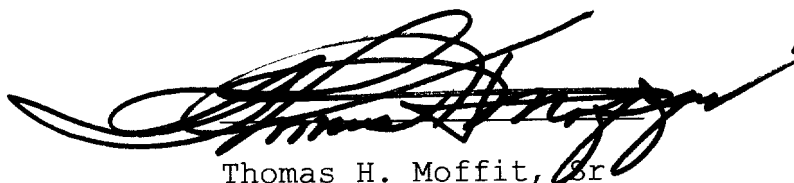
After this horrendous lengthy experience that was financially costly and consuming critical years of a life it should be apparent that AM radio station and other broadcast facilities are going to be in peril due to the eventual need to move and construct transmission facilities throughout the nation. There must be supervisory control by a continuing agency such as the FCC who has the technical knowledge and understanding of the need for the service to the public that can only be provided by communications facilities.

In summation, the above mention of misconduct and abuse by local township governments is perfect reason why we should have Federal preemption by the Federal Communications Commission, the authority granted by Congress which would allow a qualified licensee to construct and operate a radio station within the wisdom and mandate of the Federal Communications Commission.

In conclusion, we offer to make available the official transcript of the Zoning Hearing Board hearings, and all briefs and decisions in the subsequent appeals. (Some video tapes are also available.)

Moffit hereby requests the privilege of a personal presentation to the Commission as it studies this most important matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Thomas H. Moffit, Sr.", with a large, stylized flourish extending to the left.

Thomas H. Moffit, Sr.
President,
WVCH Communications, Inc.